

04-1170 KANSAS V. MARSH

DECISION BELOW: 102 P.3d 445 (Kan. 2004)

QUESTION PRESENTED

Does it violate the Constitution for a state capital sentencing statute to provide for the imposition of the death penalty when the sentencing jury determines that the mitigating and aggravating evidence is in equipoise?

Cert. Granted 5/31/05

In addition to the Question presented by the petition, the parties are directed to brief and argue the following Questions:

Does this Court have jurisdiction to review the judgment of the Kansas Supreme Court under 28 U.S.C. Sec. 1257, as construed by *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975)?

Was the Kansas Supreme Court's judgment adequately supported by a ground independent of federal law?